FDIC Advisory Committee on Community Banking

October 26, 2022

Supervision and Policy Update

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October 26, 2022

FDIC Return to Banks

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Re-Presentment of Unpaid Transactions
Fees Associated with Authorize Positive/Settle Negative Transactions

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Re-Presentment of Unpaid Transactions

- Relates to a bank's assessment of multiple non-sufficient funds (NSF) fees arising from the re-presentment of the same unpaid transaction

- On August 18, 2022, the FDIC issued FIL-40-2022 – Supervisory Guidance on Multiple Re-Presentment NSF Fees to share its supervisory approach where a violation of law is identified and full corrective action is expected

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Re-Presentment of Unpaid Transactions

- **FIL-40-2022 – Supervisory Guidance on Multiple Re-Presentment NSF Fees**

  - Highlights several consumer compliance risks associated with this practice including violating Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive actions or practices, third-party risk and litigation risk

  - Encourages institutions to review their practices and disclosures and consider several risk mitigation practices

  - Notes that examiners will generally not cite a violation where an institution has self-identified the violation and fully corrected the issue prior to the start of the consumer compliance examination

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Fees Associated with "Authorize Positive/Settle Negative" Transactions

- Relates to a bank's assessment of an overdraft fee based on insufficient funds at the time of settlement, even though the consumer had sufficient funds available when the consumer entered into the transaction – commonly referred to as an "Authorize Positive/Settle Negative" (APSN) transaction

- The FDIC's June 2019 Consumer Compliance Supervisory Highlights described the practice, highlighted consumer compliance risks, and provided several ways in which an institution could mitigate risks related to this practice

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Misrepresentation of Deposit Insurance

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FDIC's Statutory Authority

Section 18 of the Federal Deposit Insurance Act prohibits any person from:

- Misusing the name or logo of the FDIC to represent or imply that any uninsured product is insured, or
- Making knowing misrepresentations about the extent or manner of deposit insurance coverage.

New Rule Regarding Misrepresentation of Deposit Insurance

- In recent years, the FDIC observed an increasing number of instances where financial service providers or other entities or individuals were misusing the FDIC's name or logo or were making false or misleading representations about deposit insurance.
- On May 17, 2022, the FDIC issued a new rule to provide transparency regarding the agency's procedures for identifying, investigating, and where necessary, taking enforcement actions against individuals or entities to address such misrepresentations.
- The new rule became effective July 5, 2022.

Types of Deposit Insurance Misrepresentations

Fraudulent entities may create websites to mimic or spoof legitimate bank websites in the hopes of collecting customers’ names and passwords.

Non-bank financial service providers may imply or state that the non-bank entity is FDIC-insured and/or that the entity’s uninsured products or services are insured.

Non-bank companies (e.g., precious metal dealers) may make false statements about the efficacy of deposit insurance in an effort to lure customers toward higher-risk investments.

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Recent Enforcement Efforts

- As part of the FDIC's new Misrepresentation Rule, the FDIC established an online portal to receive complaints and inquiries about potential deposit insurance misrepresentations.
- Available at: https://ask.fdic.gov/fdicinformationandsupportcenter
- Since July 5th, more than 325 complaints have been received through the portal.
- In response to these complaints, the FDIC has issued six public cease-and-desist letters to companies, and the agency is continuing to evaluate potential misrepresentations as they are brought to the FDIC's attention.

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Additional Resources Regarding FDIC Deposit Insurance

- Part 328 Rulemaking on False Advertising & Misrepresentation of Insured Status (June 2, 2022)
- Fact Sheet – What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies (July 28, 2022)
- Financial Institution Letter (FIL-35-2022) – Advisory to FDIC-Insured Institutions Regarding Deposit Insurance (July 29, 2022)
- Is an institution FDIC insured? – Visit the FDIC's BankFind website
- Inquiries regarding deposit insurance – Call 1-877-ASK-FDIC or visit the FDIC's Information and Support Center

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Request for Information – Advertising and FDIC Logos

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Proposed Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

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Proposed Policy Statement

- **Proposed Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts**
  - Issued with request for comment on August 2, 2022
  - Comment period ends November 14, 2022

- **Updates and Expansion:**
  - New section on short-term loan accommodations
  - Information about changes in accounting principles
  - Revisions and additions to examples of CRE loan workouts

- **Key Principles Retained from 2009 Statement:**
    - Financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse credit classification
    - Modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the loan balance

- Agencies received 20 unique comment letters

- **Feedback:**
  - Request to clarify the terms “comprehensive review” and “reasonable terms”
  - Request to ensure examiners focus on local market conditions rather than national trends
  - Reminder to have examiners provide support for any adjustments to collateral valuations and other examination determinations

The interagency working group will review all letters and make revisions as deemed necessary

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